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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BOARD OF TRUSTEES OF THE
PLUMBERS AND PIPEFITTERS
NATIONAL PENSION FUND and
BOARD OF TRUSTEES OF THE
INTERNATIONAL TRAINING FUND

Plaintiffs,

vs.

A.R. AIR CONDITIONING, INC.; LINDA
SCOGGINS; GREGORY ALLEN
SCOGGINS; MARK WAYNE
SCOGGINS; and, DOES 1 THROUGH
20

Defendants.

Case No.

COMPLAINT FOR DAMAGES FOR
BREACH OF COLLECTIVE
BARGAINING AGREEMENT; BREACH
OF TRUST AGREEMENT; ; AND
MULTIPLE VIOLATIONS OF THE
EMPLOYEE RETIREMENT INCOME
SECURITY ACT OF 1974 (ERISA)

Plaintiffs, Board of Trustees of the Plumbers and Pipefitters National Pension Fund ("National Pension Fund") and Board of Trustees of the International Training Fund ("International Training Fund") (collectively, the "Trust Funds") allege as follows:

JURISDICTION AND VENUE

1. Jurisdiction in this Court is based on Section 502(e)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §1132(e)(1), which grants United States District Courts exclusive jurisdiction over civil actions brought by a fiduciary pursuant to Section 502(a)(3) of ERISA, 29 U.S.C.

1 §1132(a)(3), to redress violations or enforce the terms of ERISA or an employee benefit
2 plan governed by ERISA. Such jurisdiction exists without respect to the amount in
3 controversy or the citizenship of the parties, as provided in Section 502(f) of ERISA, 29
4 U.S.C. §1132(f).

5 2. Jurisdiction is also based on Section 301(a) of the Labor Management
6 Relations Act, 1947, as amended ("LMRA"), 29 U.S.C. §185(a), which grants the district
7 courts original jurisdiction over suits for Violations of contracts between an employer
8 and a labor organization in an industry affecting commerce, without respect to the
9 amount in controversy and the citizenship of the parties.

10 3. Venue is proper in this Court pursuant to Section 502(e)(2) of ERISA, 29
11 U.S.C. §1132(e)(2), and Section 301(a) of the LMRA, 29 U.S.C. § 185(a), in that this is
12 the district in which the Trust Funds are administered, the signatory local unions
13 maintain their offices, and where the relevant acts took place.

14 **PARTIES**

15 **The Trust Funds**

16 4. The Trust Funds are jointly trustee labor-management trust funds created
17 and maintained pursuant to Section 302(c)(5) of the LMRA, 29 U.S.C §186(c)(5). The
18 National Pension Fund is an employee pension benefit plans as defined in Section 3(2)
19 of ERISA, 29 U.S.C. §1002(2). The International Training Fund is an employee welfare
20 benefit plans as defined in Section 3(1) of ERISA, 29 U.S.C. §1002(1). The Trust Funds
21 are also multi employer plans as defined in Section 3(37)(A) of ERISA, 29 U.S.C.
22 §1002(37)(A)

23 5. The Trust Funds were created pursuant to separate agreements and
24 declarations of trust ("Trust Agreements") executed and maintained pursuant to
25 collective bargaining agreements between the United Association of Journeymen and
26 Apprentices of the Plumbing and Pipe Fitting Industry, AFL-CIO, Local No. 250 ("Local
27 250"), and employers and employer associations in Southern California's air
28 conditioning and refrigeration industry, an industry affecting commerce.

1 6. The Trust Funds are funded by contributions from employers who are bound
2 to these collective bargaining agreements.

3 7. The Trust Funds are administered by Boards of Trustees, whose members are
4 the plaintiffs herein and are "fiduciaries" with respect to the Trust Funds within the
5 meaning of Section 3(21)(A) of ERISA. 29 U.S.C. §1002(21)(A)

6 8. The administrative offices of the Trust Funds are located at 103 Oronoco
7 Street. Alexandria, VA 22134.

8 **Corporate Defendants**

9 9. Defendant A.R. AIR CONDITIONING, INC. is a corporation organized and
10 existing under the laws of the State of California, and a contractor licensed as such by
11 the State of California. A.R. AIR CONDITIONING, INC. is an "employer" within the
12 meaning of Section 3(5) of ERISA, 29 U.S.C. §1002(5), and within the meaning of
13 Section 501(3) of the LMRA, 29 U.S.C. §142(3), and is engaged in commerce in an
14 industry or activity affecting commerce within the meaning of Section 3(11) and (12) of
15 ERISA, 29 U.S.C. §1002(11) and (12), and within the meaning of Section 501(1) of the
16 LMRA, 29 U.S.C. §142(1). A.R. AIR CONDITIONING, INC. maintains its principal place
17 of business at 657 Hunters Trail, Glendora, California 91773 within the jurisdiction of
18 this Court.

19 10. At all times material herein A.R. AIR CONDITIONING, INC. has been bound
20 to written collective bargaining agreements between Local No. 250 and the Air
21 Conditioning and Refrigeration Contractors of America / Mechanical Contractors of
22 America (ARCA/MCA) hereinafter referred to as the "bargaining Agreement".

23 11. The Bargaining Agreement covers employees in units appropriate for
24 collective bargaining who perform service and/or construction and construction-related
25 work in the air conditioning and refrigeration industry. The Bargaining Agreement fully
26 incorporates the Trust Agreement for the Trust Funds, which are and have at all times
27 material herein been third-party beneficiaries of the Bargaining Agreement.

28 **The Individual Defendants**

1 12. Plaintiffs are informed and believe, and thereon allege, that defendants
2 LINDA SCOGGINS, GREGORY ALLEN SCOGGINS and MARK WAYNE SCOGGINS are
3 officers, directors, controlling shareholders and beneficial owners of A.R. AIR
4 CONDITIONING, INC. and reside within the Central District.

5 13. Plaintiffs are informed and believe, and thereon allege, that the Individual
6 Defendants are responsible for running the day-to-day operations of A.R. AIR
7 CONDITIONING, INC. and are responsible for all decisions as to the payment of
8 contributions to the Trust Funds.

9 14. Specifically, the Trust Funds are informed and believe and thereon allege,
10 that the Individual Defendants acted on behalf of and in the interest of A.R. AIR
11 CONDITIONING, INC. in all aspects of labor relations and in its dealings and relations
12 with the Trust Funds, including but not limited to determining which employees A.R. AIR
13 CONDITIONING, INC. would report to the Trust Funds, the number of hours upon
14 which contributions would be reported as owing, and the amount of contributions that
15 would be paid. The Individual Defendants authorized and made payments of employee
16 benefit plan contributions from A.R. AIR CONDITIONING, INC. to the Trust Funds.

17 15. The Individual Defendants are the employer or agent of an employer
18 engaged in commerce and in an industry or activity affecting commerce as defined in
19 Section 501(1) and (3) of the LMRA, 29 U.S.C. §142(1) and (3), and within the meaning
20 of Section 301(a) of the LMRA, 29 U.S.C. §185(a), or the agent acting in the interest of
21 such an employer as defined in Section 501(3) of the LMRA, 29 U.S.C. §142(3). The
22 Individual Defendants are also an employer within the meaning of Section 3(5) of
23 ERISA, 29 U.S.C. §1002(5) and is thus obligated to make contributions to a multi
24 employer plan" within the meaning of 29 U.S.C. §1145.

25 16. The Trust Funds are informed and believe, and thereon allege, that the
26 Individual Defendants are the alter ego of A.R. AIR CONDITIONING, INC. based upon
27 the following: (a) the Individual Defendants have failed to show proper respect to the
28 separate identity of A.R. AIR CONDITIONING, INC.; (b) the Individual Defendants have

1 demonstrated fraudulent intent with respect to A.R. AIR CONDITIONING, INC. either
2 at the time of their formation by, among other things, failing to adequately capitalize
3 A.R. AIR CONDITIONING, INC., or, subsequent to its formation, by abusing its
4 corporate form; (c) the purposes of ERISA and the LMRA will be frustrated if the fiction
5 of the separateness between A.R. AIR CONDITIONING, INC. and the Individual
6 Defendants is recognized and perpetuated and (d) recognition of the corporate entity
7 would result in substantial injustice to the Trust Funds because, without employer
8 contributions, the Trust Funds will be inadequately funded, and will be unable to meet
9 their obligations to participating employees who have contributed to the Trust Funds
10 over the years

11 17. The Trust Funds are informed and believe, and thereon allege, that at all
12 relevant times the Individual Defendants have been qualifying individuals for state
13 licensing and bond purposes, and responsible managing officers of A.R. AIR
14 CONDITIONING, INC.

15 18. The Trust Funds are informed and believe, and thereon allege, that at all
16 relevant times the Individual Defendants were a partner, joint venturer, actual and
17 ostensible agent, and representative of A.R. AIR CONDITIONING, INC. and, in doing
18 the acts alleged, were acting on behalf of such partnership and joint venture, and within
19 the course and scope, and the apparent course and scope, of such agency and
20 representation and on behalf of such partnership and joint venture.

21 **THE OBLIGATION TO REPORT AND CONTRIBUTE**

22 19. Air conditioning and refrigeration contractors like A.R. AIR CONDITIONING,
23 INC. employ air conditioning and refrigeration employees to install and service air
24 conditioning and other systems. The Bargaining Agreement sets forth the terms and
25 conditions of employment for persons who perform such work in the air conditioning
26 and refrigeration industry. Such persons form a unit appropriate for bargaining and are
27 "covered employees."

28 20. Under the Bargaining Agreement and the Trust Agreements of the Trust

1 Funds, an employer is required to furnish a combined monthly contribution report
2 setting forth the identities and social security numbers of its covered employees, the
3 hours worked by such covered employees, and the total amount of contributions owing
4 to the Trust Funds on behalf of such covered employees. The employer's monthly
5 contributions to the Trust Funds are calculated by determining the total number of hours
6 worked by each covered employee, and multiplying all such hours by the prescribed
7 hourly contribution rates set forth in the Bargaining Agreement. Such contributions are
8 due by the tenth day of the month following the month worked and become delinquent
9 if not paid by the fifteenth day of such month.

10 21. The Bargaining Agreement, Trust Agreement and/or written policy of the
11 Trust Funds provide that an employer shall be liable to the Trust Funds for interest of
12 12% on unpaid contributions.

13 22.. Pursuant to ARTICLE VI, Section 5 of the Restated Agreement and
14 Declaration of Trust establishing the National Pension Fund, an Employer who fails to
15 timely pay the amounts required by the Collective Bargaining Agreement shall be
16 obligated to pay liquidated damages in the amount of 10% of the amount due plus
17 interest of 12% per annum.

18 23. Pursuant to ARTICLE VI, Section 6 of the Restated Trust Agreement
19 establishing the International Training Fund, and at the discretion of the Trustees, an
20 Employer who fails to pay the amounts required by the Collective Bargaining
21 Agreement within ten (10) calendar days of the due date shall be obligated to pay
22 liquidated damages for each monthly report or payment due in the amount of twenty
23 percent (20%) of the amount due plus interest of 12% per annum.

24 24. The Bargaining Agreement, Trust Agreement and/or written policy of the
25 Trust Funds provide that an employer shall be liable to the Trust Funds for any costs
26 incurred in, or relating to, the collection of any contributions and delinquency fees due
27 the Trust Funds, including reasonable attorney's fees, court costs, interest, and other
28 expenses incurred in the enforcement of collection.

1 25. Because contributing employers themselves calculate and prepare the
2 monthly reports, the Trust Funds must rely upon the honesty of employers and their
3 accuracy in reporting the hours worked and contributions owed on behalf of their
4 covered employees.

5 26. The Bargaining Agreement, Trust Agreement and/or written policy of the
6 Trust Funds states that unpaid contributions are vested assets of the Trust Fund on the
7 day they become due or delinquent.

8 **THE FAILURE TO PROPERLY REPORT AND PAY CONTRIBUTIONS**

9 27. Plaintiffs are informed and believe, and thereon allege, that Defendants
10 owe the PLUMBERS AND PIPEFITTERS NATIONAL PENSION FUND unpaid
11 contributions for the work months of June 2015 through April 2016 in the amount of
12 \$4,586.55; liquidated damages for said months in the amount of \$458.66; and interest
13 for said months as of June 15, 2017 in the amount of \$807.46. The total owed the
14 PLUMBERS AND PIPEFITTERS NATIONAL PENSION FUND as of June 15, 2017 is
15 therefore, \$5,852.66.

16 28. Plaintiffs are informed and believe, and thereon allege, that Defendants
17 owe the INTERNATIONAL TRAINING FUND unpaid contributions for the work months
18 of July 2015 through April 2016 in the amount of \$304.18; liquidated damages for said
19 months in the amount of \$60.84; and interest for said months as of June 15, 2017 in
20 the amount of \$53.48. The total owed the INTERNATIONAL TRAINING FUND as of
21 June 15, 2017 is therefore, \$418.50.

22 29. Defendants were given timely written notice of the above stated
23 delinquencies, including demand for payment and intent to file suit, but has failed to pay
24 the amounts demanded.

25 30. A.R. AIR CONDITIONING, INC. and the Individual Defendants are fully
26 aware of the obligation to make contributions on behalf of covered work performed by
27 employees of A.R. AIR CONDITIONING, INC. and the obligation to submit accurate
28 remittance reports and submit to an audit, as set forth herein, and are equally aware of

1 their failure to make such contributions.

2 **FIRST CAUSE OF ACTION**

3 **For Breach of Collective Bargaining Agreement**

4 31. Plaintiffs allege, and incorporate herein by reference, each and every
5 allegation set forth in paragraphs 1 through 30 above.

6 32. The failure of A.R. AIR CONDITIONING, INC. to pay contributions and other
7 sums when due are violations of the Bargaining Agreement. As a direct result, A.R.
8 AIR CONDITIONING, INC. has become indebted to the Trust Funds for contributions
9 and other sums, and will become indebted to the Trust Funds for additional
10 contributions and other sums as alleged above, and which will be established at trial or
11 an earlier stage of the proceedings. The Individual Defendants, as an employer within
12 the meaning of ERISA and LMRA, and also as the alter ego, partner, or joint venturer
13 of A.R. AIR CONDITIONING, INC., are jointly and severally liable for such damages.

14 33. The Trust Funds are informed and believe, and thereon allege, that additional
15 delinquencies have occurred both before and after the date of this complaint, and that
16 such delinquencies are continuing. As a direct result, A.R. AIR CONDITIONING, INC.
17 has become and will become indebted to the Trust Funds for additional contributions
18 and other sums in an amount which will be established at trial or an earlier stage of the
19 proceedings.

20 **SECOND CAUSE OF ACTION**

21 **For Breach of Trust Agreement**

22 34. Plaintiffs allege, and incorporate herein by reference, each and every
23 allegation set forth in paragraphs 1 through 33 above.

24 35. The failure of A.R. AIR CONDITIONING, INC., to pay such contributions and
25 other sums to the Trust Funds on the dates on which such contributions and other sums
26 were due are violations of the Trust Agreement. As a direct result, A.R. AIR
27 CONDITIONING, INC., has become indebted to the Trust Funds for contributions and
28 other sums, and will become indebted to the Trust Funds for additional contributions

1 and other sums which will be established at trial or an earlier stage of the proceedings.

2 36. The Individual Defendants as an employer within the meaning of ERISA and
3 the LMRA, and also as the alter ego, partner or joint venturer of A.R. AIR
4 CONDITIONING, INC., are jointly and severally liable.

5 **THIRDH CAUSE OF ACTION**

6 **Damages for Alter Ego Violations**

7 **Establishing Liability for Individual Defendants**

8 37. Plaintiffs allege, and incorporate herein by reference, each and every
9 allegation set forth in paragraphs 1 through 36 above.

10 38. Pursuant to the above alter ego violations, the Individual Defendants cannot
11 take advantage of the corporate form and are therefore personally liable for all amounts
12 owed to the Trust Funds pursuant to Section 502(g)(2) of ERISA, 29 U.S.C.
13 §1132(g)(2).

14 39. Because the Individual Defendants acted with malice, oppression and
15 conscious disregard of the rights of the Trust Funds, the Trust Funds are entitled to and
16 seek an award of punitive damages as an appropriate legal remedy available under
17 Section 502(g)(2)(E) of ERISA, 29 U.S.C. §1132(g)(2)(E), in an amount deemed
18 appropriate by the Court.

19 **WHEREFORE PLAINTIFFS PRAY FOR JUDGMENT AGAINST DEFENDANTS AS**
20 **FOLLOWS:**

21 **As to all Causes of Action:**

22 1. For payment of delinquent contributions, liquidated damages, interest, audit
23 fees and costs from Defendants for all months that Defendants are delinquent as of the
24 time of trial, in an amount which is presently unknown to the Trust Funds, but which the
25 Trust Funds will establish by proof.

26 2. For reasonable attorney's fees and costs of suit.

27 3. For prejudgment interest pursuant to Section 502(g)(2) of ERISA, 29 U.S.C.
28 § 1132(g)(2), and post-judgment interest in accordance with the Bargaining Agreement,

1 the Trust Agreements and law, in an amount presently unknown to the Trust Funds, but
2 which will be established at the time of trial.

3 4. For such other and further relief as to this Court may deem proper.
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5 Dated: June 15, 2017 Respectfully submitted,
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9 /S/ Jack R. Wilkerson

10 Jack R. Wilkerson
11 Attorney for Plaintiffs
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